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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

In re:	Case No. 08-35653 (KRH)
CIRCUIT CITY STORES, INC., et al.,	Chapter 11
Debtors.	(Jointly Administered)

SUPPLEMENT TO OBJECTION OF THE UNITED STATES TRUSTEE TO ADDRESS NEW ARGUMENTS RAISED AT THE HEARING ON THE MOTION OF THE LIQUIDATING TRUSTEE TO DETERMINE EXTENT OF LIABILITY FOR POST-CONFIRMATION QUARTERLY FEES PAYABLE TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C. § 1930(A)(6)

John P. Fitzgerald, III, Acting United States Trustee for Region Four (the "United States Trustee"), respectfully files this Supplement to address three new arguments that were raised for the first time at the June 12, 2019, hearing on the *Motion of the Liquidating Trustee to Determine*

Extent of Liability for Post-Confirmation Quarterly Fees Payable to the United States Trustee Pursuant to 28 U.S.C. § 1930(A)(6) (the "Motion").

1. The Liquidating Trustee raised for the first time at the hearing an argument based on the Takings Clause of the Constitution. However, the Supreme Court reaffirmed in 2013 in *Koontz v. St. Johns River Water Management District*, that "[i]t is beyond dispute that '[t]axes and user fees . . . are not "takings."' 570 U.S. 595, 615 (2013) (quoting *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 243, n.2 (2003) (Scalia, J. dissenting) (ellipses in original)). *See also West Virginia CVP Fund v. Stacy*, 671 F.3d 378, 387 (4th Cir. 2011) ("[W]e hold that the mere imposition of an obligation to pay money does not give rise to a claim under the Takings Clause.").

2. At the hearing, the Liquidating Trustee also cited a case not cited in the Motion, *No v. Gorman*, 891 F.3d 138 (4th Cir. 2018), which counsel argued was relevant to his uniformity argument under the Bankruptcy Clause. That case, however, does not address either the Bankruptcy Clause or uniformity. Rather, it held that a local bankruptcy rule that provided for dismissal without a hearing was invalid because it conflicted with a provision of the Bankruptcy Code that required a hearing.

3. Finally, the Liquidating Trustee argued for the first time at the hearing that the Judicial Conference's decision not to collect the increased fees set forth in the 2017 amendment until October 1, 2018, is relevant to his retroactivity argument (as opposed to the uniformity argument) because it reflected an alternative, equally reasonable, reading of the amendment. But as shown in the Report of the Judicial Conference Committee on the Administration of the Bankruptcy System, at 20 (Sept. 2018) (attached as Exhibit C to the United States Trustee's

Response, Dkt. No. 14203), the Committee was not purporting to interpret the 2017 amendment—rather, it simply decided that the new fee calculations "should apply in BA districts beginning in the first quarter of fiscal year 2019 (that is, for any chapter 11 case filed on or after October 1, 2018, and not for cases then pending)." Moreover, any interpretation of the amendment as imposing the temporary fee increase only on or after October 1, 2018, could have no basis in the language of the 2017 amendment because the amendment makes no reference to October 1, 2018.

CONCLUSION

For these reasons, the United States Trustee respectfully asks this Court to deny the Motion.

Date: June 14, 2019

Respectfully submitted,

John P. Fitzgerald, III
Acting United States Trustee, Region Four

By: /s/ ***Robert B. Van Arsdale***
Robert B. Van Arsdale (Va. Bar No. 17483)

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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2019, a true copy of the foregoing was delivered via electronic mail pursuant to the Administrative Procedures of the CM/ECF System for the United States Bankruptcy Court for the Eastern District of Virginia to all necessary parties, specifically including the following:

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In addition, a copy was mailed to the following by first class postage pre-paid United States mail:

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/s/ *Robert B. Van Arsdale*
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